HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : September 06, 2007
Judgment delivered on : October 29, 2007

W.P. (C) No. 5532/2007 & C.M. No.10716-19/2007

Mr. Sunil Bansal ..... Petitioner
! Through: Mr. Rakesh Tiku with Mr. Puneet Agarwal & Mr. Israr Ahmed, Advocates

versus

$ Bharat Petroleum Corpn. Ltd. & Anr..... Respondents
^ Through: Mr. Rajiv Nayyar, Sr. Advocate with Mr. A.D.N. Rao, Advocate for the respondent no. 1.
Mr. N.K. Kaul, Sr. Advocate with Mr. S. Prasad, Mr. Karan Mehta and Mr.Siddharth Bambha, Advocates for the applicants in CM Nos. 10716-18/07.
Ms. Zubeda Begum, Advocate for the GNCT/respondent.

***CORAM:**

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.
:

1. The petitioner seeks a mandamus for consideration of his price bids submitted in response to a tender invited by the respondent

Bharat Petroleum Corporation Ltd., for the procurement of trucks for transportation of LPG cylinders in Haryana/Delhi. The grievance of the petitioner in a nutshell is that the respondents are proceeding to accept the bids of those bidders who are offering trucks that are either not even Bharat Stage I complaint or Bharat Stage I or stage II compliant, manufactured prior to 1.4.2005, while refusing to entertain the petitioner who is also offering Bharat Stage II compliant trucks manufactured after 1.4.2005, only on the ground that the trucks offered by the petitioner are not Euro Stage III/Bharat Stage III compliant in respect of emission norms, even though the trucks offered by the petitioner are relatively new, and are entitled to ply on roads in the NCT of Delhi/NCR to pick up and set down goods within the NCT of Delhi/NCR.

2. The respondent no. 1 M/s Bharat Petroleum Ltd invited tenders vide NIT bearing No.BPCL/LPG/PKD/NR/2007/03/Piyala dated 30.3.2007 from transport contractors for transportation of filled and empty cylinder in trucks, to and from Pyala LPG bottling plant /staging depot, Delhi to the destination as may be directed by Respondent No. 1 from time to time. The bid was to be made in two parts, viz. Credential Bid and Price Bid (clause 2 of General Terms and Conditions (GCT)). Though the exact number of trucks required was not indicated, an approximate figure of 196 trucks was indicated in the tender documents (clause 12 GCT). The work itself is divided into two parts, namely, part A, pertaining to Haryana market and Part B pertaining to

Delhi markets. The price bid in respect of Haryana markets and Delhi markets were required to be submitted in different formats. The bidders were free to offer trucks in either Part A, Haryana Markets or Part B, Delhi markets or for both. In this petition we are only concerned with the Part B, Delhi markets, since the petitioner offered all his trucks only for Delhi markets and the trucks offered by the petitioner are having registration with the Delhi Transport Authority.

3. For better understanding of the mechanics of the tender, we set out below the tabulation in which the rates were to be quoted by the bidders who offered their trucks for Part B, Delhi markets.

To / *From*	*Delhi Staging Depot (Rs. per Cyl)*	*Delhi Market (Rs. per cyl)*	*Other States (Ps. per cyl per km)*
Ex-Pyala			N.A.
Ex. Staging Depot	N.A.		

4. Therefore a bidder participating in the tender for Part B Delhi markets could offer his trucks on the following sectors:

a) Pyala LPG bottling Plant to Staging Depot, Delhi and return;

b) Pyala LPG bottling Plant to Delhi markets and return

c) Staging Depot, Delhi to Delhi Markets and return.

d) Staging Depot, Delhi to other States and return.

5. Bids were to be evaluated on the rates quoted on sector wise basis, and lowest quoted rate for a particular sector was to be given preference for that sector. It was not essential for a bidder to

quote rates for all the sectors, and the price bid of a tenderer was to be considered only for the sector offered to be operated by him (Clause 37(1) r/w notes 1 & 2 in Standard Terms and Conditions (STC)).

6. The clause 9 of the STC of the tender prescribed that the trucks offered for Part A sectors or part B sectors must comply with the following conditions respectively :

> "9.3 Trucks must be covered with state permit where BPCL's Bottling Plant exists.
>
> a. Part A (Haryana State)
>
> 1. Haryana State registration of Truck.
> 2. Certificate of fitness
> 3. Haryana State Local Goods Permit
> 4. Insurances
> 5. Complying with Euro III Mass Emission Norms (Trucks manufactured after 01.04.2005).
>
> b. Part B (Delhi State)
>
> 1. Delhi State Registration of Truck.
> 2. Certificate of fitness (with Speed governor, where ever applicable)
> 3. Delhi State Local Goods Permit and Haryana Road permit (as applicable for Haryana).
> 4. Insurances
> 5. Complying with Euro III Mass Emission norms (Trucks

manufactured after 01.04.2005).

7. Bidders were also required to submit registration certificate/certificate of fitness/route permits of their trucks/copy of invoice or any supporting documents confirming compliance of Euro III Mass Emission Norms for trucks manufactured after 1.4.2005 (clause 16(b) of STC) along with other documents. The selection criteria laid down in clause 21 of the STC provided, inter alia, that *"subject to evaluation criteria, preference for award of job will be given as under:*

1. Owned trucks over attached trucks.

2. Age of trucks i.e latest year, model will be given preference.

3. Higher capacity Trucks (applicable for Part A)"

(emphasis supplied)

Petitioner's Submissions

8. The petitioner along with his brothers claims to be in the business of transportation. The trucks of the petitioner have been running under contract with various oil companies including the respondent No.1.

9. The petitioner and his brothers had submitted their bids offering 135 trucks in the name of their firms viz., M/s. National Logistic Company, M/s. National Bulk Carrier and M/s. National Transport Company (hereinafter called the "three firms").The credential bids of the bidders, according to the petitioner, have already been opened and the petitioner and his three firms are claimed to have been declared successful pursuant to which earnest money was deposited. Physical

verification of the trucks being offered is also stated to have been carried out under clause 18 of the STC.

10. The grievance of the petitioner is that even though the trucks offered by him in the name of his three firms are those manufactured after 1.4.2005 and are, therefore, only two to three years old, the three firms have not been called for participation in the opening of the price bids, while bidders offering much older trucks, which are not even Bharat Stage I complaint, or are Bharat Stage I or Bharat Stage II complaint, and are manufactured before 1.4.2005, have been called, on the ground that the trucks offered by the three firms do not comply with Euro III/Bharat State III Mass Emission Norms. This has been done by the respondents on the presumption that the vehicles offered by petitioner cannot legally ply on the routes/sectors in respect of which the aforesaid tender is called.

11. The petitioner submits that it had sought clarification from the Transport Department on the issue whether he could offer his trucks to the respondent for the proposed operation under the aforesaid tender vide its letter dated 25.6.2007. The Transport Department in its reply dated 6th of July 2007 informed the petitioner that since the proposed operation was to be carried out between two states, the conditions which apply to trucks which operate on local permit, i.e. within the boundaries of Delhi would not govern the said proposed operation. These conditions were not applicable to vehicles having National Permits registered with the Transport Department of

Delhi which were allowed to operate on the basis of the terms and conditions of the said permit. Thus, the decision of the respondent in not inviting the petitioner for consideration of the petitioner's price bid is therefore, illegal and arbitrary.

Respondent's submissions

12. The Respondent No. 1, BPCL as well as Government of NCT of Delhi i.e., Respondent No. 2 have filed their respective counter affidavits taking divergent stands on the claim of the Petitioner. The Respondent No. 1 has relied on clause 9 of the "STC" and in particular clauses 9.3 and 9.4 read as follows:-

> 9.4 The age of the truck should not be more than 12 years from the month of floating of the tender as would appear from the original RC book. **The truck should also comply with prevailing statutory requirements in the area of operation.** Those applying under "Proposed Category" shall be governed by the requirement as mentioned earlier.
>
> (emphasis supplied)

13. Respondent no.1 submits that the Apex Court, in writ petition(C)No.13029/1985, has issued directions from time to time to the various authorities entrusted with administration and enforcement of Motor Vehicles Act.

14. Pursuant to such directions, the Ministry of Surface Transport issued Notification no.GSR 686(E) dated 20.10.2004 by which sub-rule (14) was inserted in Rule 115 of the Central Motor Vehicles Rules. This prescribes the Mass Emission Norms (Bharat

Stage III) for four wheeled vehicles w.e.f. 1.4.2005 which came into force -

a) In the National Capital Region and the cities of Mumbai, Kolkata, Chennai, Bangalore. Hyderabad including Secundrabad, Ahmedabad, Pune, Surat, Kanpur and Agra in respect of four wheeled vehicles manufactured on the from 1st April 2005, *except in respect of four wheeled transport vehicles plying on inter-State Permits or National Permits or All India Tourist Permit within the jurisdiction of these cities* and

b) In other areas of the country, from such date as may be notified by the Central Government.

15. The Respondent No. 1 has relied on the decision in W.P. (C) No. 2882/2007 (a writ petiton filed by the petitoner in respect of the same NIT) which takes note of the Supreme Court decision in W.P. (C) No. 13029/1985 consequent to which the Ministry of Surface Transport has issued the said notification introducing certain restrictions on registration and plying of vehicles that are Bharat Stage II or Stage I compliant. The contention of Respondent No.1, based upon its interpretation of a combined reading of the above materials is that any commercial vehicle, manufactured after 1.4.2005, which is not Euro III compliant cannot be registered either in the NCT of Delhi or in any other place in the NCR or other cities mentioned in the notification dated 20.10.2004. The stand of the Respondent No.1, therefore, is that

any vehicle manufactured after 1.4.2005 which is only EURO II compliant cannot ply within the NCT of Delhi or NCR, even though it may be possessed of Inter-state or National Permit. The Respondent No.1 has strenuously argued that vehicles with such specifications cannot be permitted to ply locally, and if so permitted, it would be in complete disregard to the directions of the Apex Court. Under the garb of holding inter-state or National permit, transporters cannot circuitously be permitted to do what the law proscribes. The Respondent has also refuted the claim of the Petitioner that the Petitioner's credential bid was accepted and the earnest money was accepted from them thereafter. Rather, it is submitted that the EMD had been submitted along with the bid and since the Petitioner did not qualify the credential bid evaluation, they were not called upon to participate in the opening of the price bid. Respondent No. 2 has, on the other hand, presented its own interpretation of the notification dated 16.9.2005 i.e. GSR 686 (E) issued by the Ministry of Road Transport and Highways.

16. According to the said Respondent, as on date, the emission norms for registration of vehicles in Delhi are EURO II and EURO III. These have been enforced since 1st April 2005 in respect of vehicles manufactured on or after the said date. In case of goods vehicles the norms for registration are EURO III (Bharat Stars III), irrespective of the fuel on which they run, though a distinction has been made in the case of vehicles plying on National Permit, All India Tourist Permit or Inter

State permit. Vehicles having any of the aforesaid permits are registrable in the NCR even when they comply with Euro II emission norms. Moreover, the pre 1.4.2005 manufactured goods vehicles have been permitted to continue running till they attain maximum prescribed age of 15 years from the date of initial registration. While dealing with National permits respondent no.2 has submitted in its counter affidavit as under:

> **"National permits are granted under Section 88(12) of the Motor Vehicles Act.**
>
> This requires an operator to opt for a minimum of 4 states including home state. As such goods carriages registered outside Delhi and plying on national permit, which includes Delhi as one of the 4 States, **can ply within Delhi irrespective of the norms applicable in Delhi**." (emphasis supplied)
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> It further stated that:
>
> "12. That therefore the national permit is issued to encourage long distance Inter State transportation of goods. **However, a vehicle having National permit can also operate locally in the home state as per rule 90(7) of Central Motor Vehicle rule 1989 which is reproduced as under:**
>
> > **"the vehicle shall not pick up or set down goods between two points situated in the same state (other than the home state)"** (emphasis supplied)
>
> 13. That the above position is also has been clarified by the Ministry of Shipping, road Transport & Highways, Government of India in reply to the clarification sought under Right to Information Act, 2005 vide No. RT-23018/2007-T dated 20th June 2007.

> 14. That as per the above provisions a vehicle having National Permit can operate to transport goods between states as authorised **and also can transport goods between two points in the home state in which it has been registered."** (emphasis supplied)

Submissions of Applicant in C.M. No. 10716 to 10718 of 2007

17. The petition has also been opposed by M/s. Triveni Road Carriers(P) Ltd and Anmol Transport Company, who claim to be amongst those bidders whose credential bid has been found to be acceptable. They filed C.M.No.10718/07 for impleadment as party respondents and C.M.No.10716/07 for recall of the order dated 31.7.2007, whereby this Court had directed that "*Without prejudice to the rights and contentions of the parties, the evaluation process of the bids, including that of the bid of the petitioner, may go on*."

18. It appears that the respondent no.1, instead of opening the price bids of the petitioner's three firms has opted to await a decision on merits in this case and has therefore not opened any of the price bids so far. Since the petitioners had no objection to their being heard, we have also allowed them to intervene and make their submissions in opposition to the writ petition.

19. It is contended by these applicants that the petitioner is bound by the tender conditions and cannot seek to question them. It is the prerogative of the tendering authority to prescribe the conditions on which it invites bids. The petitioner cannot ask the court to rewrite the tender conditions. The petitioner has unsuccessfully challenged

the tender conditions by filing W/P(C)No.2882/2007 and after being unsuccessful, is again making a second attempt by raising contradictory stands. It is also contended that merely because the petitioner has obtained national/inter-state permits for its trucks, it could not undertake transportation of goods from one point to another within the NCT of Delhi/NCR. Learned senior counsel Mr. Neeraj Kaul referred to a communication dated 18.12.2006 of the Respondent No. 2 herein, filed on record in W.P. (C) No. 2882/2007, wherein the Respondent No. 2 has stated that the intention of issuing the notification No. GSR 686(E) dated 20th October 2004 is to allow only Bharat Stage III compliant four wheeled vehicles for plying within the NCR of Delhi. This intention cannot be overridden by using the technical route of National permit/Inter-State permit/All India Tourist permit for plying four wheeled transport vehicles primarily within NCT of Delhi, National Capital Region and occasionally outside the National Capital Region. This communication also states that thrust of various orders of the Supreme Court and the directions issued by it has been to minimise the environmental pollution due to vehicular emissions. The communication also stated that oil companies have been awarding contract for transportation of LPG cylinders/oil supply for Delhi without fully appreciating the import of the provisions which result in avoidable action against such vehicles.

Discussion & Decision

20. The stand of the Respondent No. 1 has been that the bid of the Petitioner's three firms were not processed for the reason that the vehicles offered by them were not complying with Bharat Stage III norms, though manufactured after 1.4.2005. According to them such vehicles cannot be registered, much less ply on Delhi roads for ferrying goods within the NCT of Delhi or the NCR.

21. From a reading of the counter affidavit of Respondent No. 1, it appears that the requirement prescribed by it in the NIT to the effect that the offered vehicles manufactured after 1.4.2005 have to be Euro III compliant, is founded entirely upon the aforesaid interpretation of the law as understood by Respondent No. 1 and, this requirement, otherwise has no nexus with the object sought to be achieved, which is to secure the services of contractors to transport LPG filled/empty cylinders. Respondent No. 1, in para 10 of their counter affidavit say that the order of the Supreme Court and the notification "*are binding on everybody including the answering Respondent herein*". In para 18, Respondent No. 1 states that the *"tender conditions are in accordance and compliance of the*" orders passed by the Supreme Court and the provisions of the Motor Vehicles Act and the Rules made thereunder.

22. Consequently, if the interpretation given by Respondent No.1 to the relevant rules and judicial orders is found to be incorrect, and that of the petitioner and Respondent No. 2 is accepted, the entire basis on which the said restriction has been put by Respondent No. 1

would go, and the imposition of the said condition would be bad in law, it being a result of either non-application of mind or a result of taking extraneous materials into account.

23. First we may notice the historical background of the prescription of Euro/Bharat Stage norms from time to time. The Supreme Court vide order dated 13.5.1999 reported as ***M.C. Mehta v. UOI & Ors.,*** (1999) 6 SCC 14 directed that with effect from 1.6.1999, no vehicle shall be registered unless it conforms to Euro I/Bharat Stage I norms. Vehicles conforming with these norms could be registered without any restrictions between 1.6.1999 and 31.3.2000. But, with effect from 1.4.2000, no vehicle could be registered unless it conformed to Euro II/Bharat Stage II norms.

24. Then came the aforesaid notification dated 20.10.2004, GSR 686(E) prescribing Bharat Stage III norms. These rules, called the Central Motor Vehicle (Fourth Amendment) Rules 2004 came into force, inter-alia, in the NCR *"in respect of four wheeled vehicles manufactured on and from 1st April 2004,* ***except in respect of four wheeled transport vehicles plying on Interstate Permits or National Permits or All India Permits within the jurisdiction of these cities."*** (Emphasis supplied)

25. First thing to be noticed is that Bharat Stage III norms have not been enforced all over the country. They have been enforced only in the specifically mentioned cities. Secondly, Bharat Stage III norms have not been made applicable to four wheeled transport vehicles,

which ply on Inter-State or National or All India Tourist Permits within the NCR. Consequently, after 1.4.2004 a fourwheeled transport vehicle would normally not be registered by Respondent No.2 unless it complies with Euro III/Bharat Stage III norms. The exception to this rule would be where the registrant applies for and obtains inter alia, a National Perit or an Inter State Permit from the Appropriate Authority.

26. Section 88(1) of the Motor Vehicle Act inter-alia, states that a permit granted by a Regional Transport Authority of any region, shall not be valid in any other State, unless it is countersigned by the State Transport Authority of that other State. Section 88(12) overrides Section 88(1), inasmuch as, it authorizes the appropriate authority, *for the purpose of encouraging long distance inter-state road transport*, to grant National Permits in respect of goods carriages. "National Permit" is defined in Section 88(14), Explanation (c) to mean "*a permit granted by the appropriate authority to goods carriage to operate throughout the territory of India or in such contiguous States not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application.*" The provisions of, inter-alia, section 79 of the Motor Vehicle Act are, in so far as may be, applicable to or in relation to the grant of National Permits. Section 79(2) of the Act authorizes the Regional Transport Authority to grant a goods carriage permit and may, subject to any rules that may be made under the Act, attach the condition, inter-alia, that the vehicle shall be used only in a

specified area or on a specified route or routes. Consequently, the conditions that may be attached to a National Permit are those, which are in consonance with the Rules framed under the Act. Rule 90(7) of the Central Motor Vehicles Rules, 1989, as aforesaid, prescribes that the vehicle (plying on a national permit) *"shall not pick up or set down goods between two points situated in the same State* ***other than the Home State****."* This means that in the Home State, a vehicle operating on a National Permits is permitted to pick up or set down goods between two points. Pertinently, the words "*other than the Home State*" were inserted by amendment in Rule 90(7) only on 28.10.1989.

27. The expression "*Home State*' in the context of Rule 90(7) means the State in which the permit is issued. This is clear from the definition of the expression "*National Permit*" read with the definition of the expression "*Home State*" which is similarly defined in Rule 85 (which prescribes additional conditions of tourist permit) to mean "*the State which has granted the permit*".

28. Once the Rules themselves allow a National Permit holder to ply the concerned goods carriage to pick up and set down goods between two points in the Home State, apart from undertaking inter-state transportation of goods in the permitted States, it cannot be said that a transporter like the petitioner who owns Bharat Stage II complaint four wheeled transport vehicles registered in Delhi, manufactured after 1.4.2005 would not be entitled to ply his trucks/goods carriage even though he has obtained National Permits

granted by the Appropriate Authority, i.e., the respondent No.2, to pick up and set down the goods within the NCT of Delhi/NCR.

29. We now proceed to deal with the decision of this court in W.P. (C) No. 2512/2007 and 2882/2007. Both these petitions were disposed of by common judgment on 10th May, 2007. In W.P. (C) No. 2512/2007, Vijender Kumar was the petitioner whereas in W.P. (C) No. 2882/2007, Sunil Bansal, who is the petitioner in the petition before us, was the petitioner. The relief sought for in W.P. (C) No. 2882/2007, reads as follows:

> a) issue a writ in the nature of prohibition, mandamus or any other appropriate writ, orders or directions to the Respondent No.1 not to consider the tender of any contractor whose vehicles are not confirming with the existing law and in particular the motors Vehicles Act and Central Motor Vehicles Rules i.e. the vehicles should be either Bharat Stage II or Bharat Stage III Compliant.
>
> b) issue a writ in the nature of mandamus or any other appropriate writ, orders or directions thereby commanding the respondent No.1 to strictly follow the Motor Vehicles Act and Central Vehicles Rule and to consider only those tenderers whose vehicles are confirming with the law and are having Bharat Stage II and III norms;
>
> c) issue a writ in the nature of mandamus or any other appropriate writ, orders or directions thereby commanding the respondent No.1 to clarify the tender conditions as per the Motor Vehicles Act and Central Vehicles Rules and to consider only those tenderers whose vehicles are confirming with the law and are having Bharat Stage II and III norms:

30. Therefore, the petitioner had in the said writ petition sought adhearance to the Motor Vehicles Act and the Central Motor Vehicles Rules, which according to his submission, permitted only Bharat Stage II or Bharat Stage III norms compliant vehicles to ply in the NCT of Delhi/NCR. Consequently, vehicles which were either Bharat Stage I compliant or not so compliant at all were not, according to the petitioner, permitted to register or ply within the NCT of Delhi or NCR.

31. The said petition pertains to the NIT in question. The finding of the court with regard to the effect of the judgment of the Supreme Court in ***M.C. Mehta vs. Union of India in W.P. (C) No. 13029/1986*** dated 28.7.1998 and the notification of Respondent No. 2 dated 20.10.2004, i.e., GSR No.686 (E) are recorded in para 10 of the same which reads as follows:

> "We have perused the notifications in question as also the directions given in M.C. Mehta's (Supra) case wherein the Supreme Court realizing the urgency and importance of protection and improvement of the environment and to improve the quality of air and reduce vehicular pollution had approved the measures proposed by the committee and the time frame there for. We notice that as per the notification issued by the Ministry of Shipping Road Transport and Highways (Department of Road Transport and Highways), Government of India dated 20.10.2004, only vehicles manufactured after 1.4.2005, are required to comply with Bharat Stage III norms. Secondly, as per the directions issued by the Supreme Court in M.C. Mehta (Supra), commercial vehicles, which are over 15 years old by 2nd October 1998, cannot ply on Delhi roads. ***Taking into consideration the order of the Supreme Court and the notification***

> ***dated 20.10.2004, we are of the view that commercial vehicles having national permit, inter-state or all-India tourist permit and are within 15 years from their date of registration, can ply on Delhi roads. These commercial vehicles need not comply with Bharat Stage II norms if they are manufactured prior to 1.4.2005. Once they are more than 15 years old from their date of registration, they will not be permitted to ply on Delhi roads and, therefore, will be phased out in a progressive manner. Further, commercial vehicles, which sought to be registered after 1.4.2005 in Delhi, have to conform to Bharat Stage III norms.*** (Emphasis supplied).

32. The view taken by the Division Bench is that the commercial vehicles having National Permit were permitted to ply on Delhi Roads within 15 years from the date of their registration. This finding stems from the order of the Supreme Court dated 28.7.1998 as aforesaid. This finding of the Court is not related to any cut off date. It further goes on to say that commercial vehicles, which have National Permit, State Permit or All India Tourists Permit and are less than 15 years old need not comply with Bharat Stage II norms, if they are manufactured prior to 1.4.2005. In view of the aforesaid, the further observation that the commercial vehicles that are sought to be registered after 1.4.2005 in Delhi have to conform to Bharat Stage III norms has to be understood as referring to those commercial vehicles, which do not have either a National Permit or an Inter-State permit or All India Tourist permit. Unless read as aforesaid, the statement *"Further, commercial vehicles, which sought to be registered after*

1.4.2005 in Delhi, have to confirm to Bharat Stage III norms" would not be in consonance of the earlier observation in the same paragraph which reads - "*We are of the view that the commercial vehicles having national permit, inter-state or all India tourist permit and are within 15 years from their date of registration, can ply on Delhi Roads*".

33. We may also notice that in the aforesaid Writ Petitions the court did not consider the aspect that the Central Motor Vehicles (4th Amendment) Rules 2004, did not come into force "*in respect of 4 wheeled transport vehicles plying on inter-state permit or national permit or All India Tourist permit*". If the said amendment rules did not come into force in respect of four wheeled transport vehicles plying on inter-alia, Interstate Permit or National Permit, the obvious conclusion would be that Bharat Stage III norms would not be mandatorily applicable in respect of such four wheeled transport vehicles because it is by virtue of the said amendment itself that Bharat Stage III norms were introduced. It would, thus, follow that the pre-existing norms, namely the Bharat Stage II norms, would continue to apply in respect of four wheeled transport vehicles, inter-alia, plying on national permits. It is, therefore, wrong for the Respondent No. 1 to contend that such four wheeled transport which are manufactured on or after 1.4.2005, plying on inter-alia, national permit cannot be registered within the National Capital Region after 1.4.2005. Consequently, vehicles which are registered in NCT of Delhi or the NCR are permitted to pick up and set down goods between 2 points situated in the NCT of

Delhi/NCR. Respondent No. 1 is therefore not correct in its impression that the vehicles of the Petitioner which are Euro II/Bharat Stage II compliant and are manufactured after 1.4.2005 and in respect of which National/Inter-State permits have been issued are not permitted to pick up or set down goods between the two points within Delhi.

34. From a reading of the decision in the W.P. (C) No. 2512/07 & 2882/2007 and the affidavit filed by the Government and the language used in the notification, it is clear that a vehicle complying with Bharat Stage II norms, possessing a National or Interstate permit may ply in NCR or Delhi, more so, when vehicles older and less efficient and manufactured even prior to that date are permitted to ply on the Delhi roads. This view is fortified by the language used in sub rule(7) of Rule 90 of the Central Motor Vehicles Rules 1989 referred to above.

35. What the letter dated 18.12.2006 of the Assistant Director (OPS) of Respondent No.2, which is relied upon by the interveners, points out is a misuse of the National Permits/Inter-State Permits obtained in respect of four wheeled transport vehicles manufactured after 1.4.2004, which are Bharat Stage II compliant, by some transporters by resorting to plying such four wheeled transport vehicles within the Home State only, under the shelter of the National Permit/Inter-State Permit. Such instances of misuse, even if one were to assume to be taking place, are for the enforcement agencies to detect and deal with appropriately. One cannot assume that all

National Permit/Inter State Permit holders would flout the spirit in which the National Permits/Inter-State Permits are granted i.e. to encourage long distance inter-State road transport, by restricting their stage carriage operations to picking up and settling down goods within the Home State only.

36. Pertinently, the NIT in question itself shows that the work involves transport of LPG gas filled and empty cylinders from Haryana State to Delhi State and vice versa, and from Delhi State to other states and vice versa, for Delhi Registration vehicles. One cannot therefore assume that the goods carriage being offered to the respondent No.1 under the NIT in question would be limited in its operations to picking up and setting down goods within the NCT of Delhi/NCR, and on that basis exclude the Bharat Stage II compliant goods carriage vehicles/trucks from consideration for grant of contract, merely because they are registered after 1.4.2004.

37. The interpretation sought to be given by respondent No.1 to the relevant Rules would also lead to absurd results, if implemented. The result would be that while the respondent No. 1 would entertain the bids in respect of goods carriage which are not even Bharat Stage I compliant or are Bharat Stage I and II compliant and are manufactured before 1.4.2005, it would not entertain bids in respect of goods carriage which are relatively new and are manufactured after 1.4.2005 and are also Euro II/Bharat Stage II compliant. In this process, the respondent would unwittingly do precisely what it has ostensibly set

out to prevent, namely, hiring an older and older technology goods carriage, which are likely to be more polluting when compared to goods carriage/trucks, which comply with Euro II/Bharat Stage II norms and are relatively new. Pertinently, since the bidders are free to offer trucks, which are upto 12 years old, trucks manufactured in the year 1995 and thereafter can be offered by the bidders. Therefore, it is possible that the respondent might have received bids in respect of trucks which are not even Euro I/Bharat Stage I compliant since the requirement of complying with the Euro I/Bharat Stage I norms became mandatory, w.e.f. 1.6.1999. This interpretation would also militate again clause 21 of the STC which, inter-alia, provides that preference for award of job will be given in respect of trucks, which are newer or latest models.

38. We could have appreciated, had the stand of respondent No. 1 been that it would give preference to Euro III/Bharat Stage III compliant trucks, since that would have provided an incentive to the transporters to offer newer technology Euro III/Bharat Stage III compliant trucks. However, since there is no legal impediment in the plying of Euro II/Bharat Stage II compliant transport vehicle with National Permits/Inter-State Permits, which are also registered in NCT of Delhi/NCR, within the NCT Delhi/NCR and in the States in respect of which the National/Inter-State Permits is obtained, the respondent No. 1 could not have imposed the aforesaid condition by incorporating

clause 9.3(b)(5) and the other clauses requiring furnishing of documentary proof in respect thereof.

39. We are also not impressed by the argument of the intervener that it is for respondent No. 1 for lay down the tender conditions, and it is not for the courts to interfere with the same. Though that may be the position in most cases, the peculiarity that is found in the present case is that the reason why respondent No. 1 has imposed the condition, contained in clause 9.3(b)(5) of the STC and other related conditions with regard to the production of other documents and certificates, is that the respondent No. 1 admittedly was reeling under the impression that only Euro III/Bharat Stage III compliant four wheeled transport vehicles could be registered with respondent No. 2 if they were manufactured after 1.4.2005, and that only such vehicles could transport goods to and from Delhi or pick up and set down goods within the NCT of Delhi/NCR. As we have found earlier that even Euro II/Bharat Stage II four wheeled transport vehicles, which have been granted inter-alia, National Permits/Inter-State Permits are entitled to transport goods to/from Delhi and also to pick up and set down goods within NCT of Delhi/NCR, if registered in Delhi, i.e. if Delhi is their Home State, the impression entertained by respondent No. 1, which forms the basis of their decision to include the said clause in the notice inviting tender, is erroneous. Consequently, the said condition itself suffers from non-application of mind to the relevant material and also from taking of extraneous material into

consideration by respondent No. 1 while laying down the condition in the NIT and is accordingly quashed.

40. Consequently, we have no hesitation in holding that the three firms of the petitioner who have offered four wheeled transport vehicles manufactured on or after 1.4.2005, which are Euro II/Bharat Stage II compliant, having National Permits/Inter-State Permits are entitled to participate in the Tender process in question and cannot be excluded from consideration by the Respondent No.1.

41. Accordingly, we allow this petition and make the Rule absolute. The parties are left to bear their respective costs.

VIPIN SANGHI
JUDGE

A.K.SIKRI
JUDGE

October 29, 2007
P.K. BABBAR